

May 22, 2014

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



IT IS SO ORDERED.
Signed May 22, 2014

A handwritten signature in cursive script, reading "Arthur S. Weissbrodt".

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 14-50354-ASW
]	
THUAN-VU DINH HO,]	Chapter 7
]	
Debtor.]	
]	
KARI SILVA BOWYER, Chapter 7]	Adv. Proc. No. 14-05039
Trustee,]	
]	
Plaintiff,]	
]	
v.]	Hearing Date: May 22, 2014
]	Hearing Time: 2:15 p.m.
LUU PHUONG NGUYEN, BAO QUOC]	
NGUYEN, and MINH DUC T. LUU,]	
]	
Defendants.]	

TENTATIVE DECISION RE: MOTION FOR PRELIMINARY INJUNCTION

Before the Court is the application of the chapter 7 trustee, Kari Bowyer, who is represented by attorney Marlene Weinstein, for a preliminary injunction restraining Defendants Luuphuong Nguyen, Bao Quoc Nguyen, and Minhduc T. Luu from using any remaining proceeds from the sale of real property at 3482 Lapridge Lane, San Jose, CA (the "Property"). Defendants are represented by attorney Michael Chinh Vu, but have not filed an opposition to this motion.

1 According to declarations filed in this case by Ms. Weinstein
2 and Defendants, the Property was acquired by Debtor and Defendant
3 Luuphuong Nguyen ("Luuphuong") during their marriage. Prior to the
4 dissolution of the marriage, on February 4, 2013, Debtor
5 transferred his interest in the Property to Luuphuong. Thereafter,
6 on April 2, 2013, Luuphuong filed a Petition for Dissolution in
7 Santa Clara County Superior Court. By judgment entered June 5,
8 2013, the family court awarded Luuphuong the Property. At the time
9 of the transfer, the debt on the Property was less than \$500,000.
10 Debtor filed this bankruptcy case on February 14, 2014. On April
11 4, 2014, Luuphuong sold the Property for \$950,000, and thereafter
12 spent most, if not all, of the net proceeds, including paying
13 \$150,000 to Luuphuong's parents, Defendants Bao Quoc Nguyen and
14 Mindhuc T. Luu.

15 In deciding whether to grant a preliminary injunction, the
16 Court considers: (1) whether Plaintiff's case has a likelihood of
17 success on the merits; (2) whether Plaintiff faces irreparable
18 injury if the injunction is not granted; (3) whether the balance of
19 hardships favors the Plaintiff; and (4) whether the public interest
20 is advanced. See Overstreet v. United Brotherhood of Carpenters
21 and Joiners of America, Local Union No. 1506, 409 F.3d 1199, 1207
22 (9th Cir. 2005). Alternatively, the Court may grant an injunction
23 if the movant demonstrates either: (1) a combination of probable
24 success on the merits and the likelihood of irreparable harm; or
25 (2) that there are serious questions going to the merits and the
26 balance of hardships tips sharply in movant's favor, or movant has
27 a fair chance of success on the merits. In re Excel Innovations,
28 Inc., 502 F.3d 1086, 1093 (9th Cir. 2007).

1 The Supreme Court has made it plain that for an injunction to
2 issue, the movant must show a likelihood of irreparable harm, not
3 merely the possibility of irreparable harm. Winter v. Natural
4 Resources Defense Council, Inc., 129 S. Ct. 365, 375-76 (2008).
5 The two formulations for issuance of an injunction are not separate
6 and distinct tests, but rather opposite ends of a sliding scale in
7 which the required degree of irreparable harm increases as the
8 probability of success decreases. Earth Island Institute v. U.S.
9 Forest Service, 351 F.3d 1291, 1310 (9th Cir. 2003). A less robust
10 showing of likelihood of success is required where the hardships
11 tip decidedly toward the plaintiff. Caribbean Marine Services Co.,
12 Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

13 Overall, the Court finds that the factors weigh in favor of a
14 preliminary injunction pending resolution of this adversary
15 proceeding. The balance of hardship weighs in Plaintiff's favor
16 because Defendants may have already spent all of the funds and, to
17 the extent there is any chance of recovery, that chance should be
18 preserved. As the Defendants have apparently spent most, if not
19 all, of the funds, there is no prejudice to Defendants.

20 With regard to likelihood of success, the trustee appears to
21 have evidence to support a cause of action for actual or
22 constructively fraudulent transfer and for unauthorized post-
23 petition transfer. Based on the current record before the Court,
24 it appears that the Property was community property and thus
25 property of the estate; the transfer occurred within two years of
26 Debtor's bankruptcy filing; Debtor received less than reasonably
27 equivalent value and was insolvent or became insolvent as the
28 result of the transfer, based on Debtor's schedules and those of

1 Debtor's dental practice. At the very least, there are serious
2 questions about whether the transfers are avoidable and the estate
3 has a valid interest in the proceeds.

4 Finally, the public interest is served by permitting the
5 trustee to pursue this adversary proceeding pursuant to the
6 trustee's duty to administer estate assets for the benefit of
7 creditors.

8 For these reasons, the Court will issue a preliminary
9 injunction pending resolution of this adversary proceeding. Counsel
10 for the trustee may submit a proposed form of order.

11 This is a Tentative Decision. The parties may argue the
12 matter at the hearing scheduled for May 22, 2014 at 2:15 p.m.

13 *****END OF TENTATIVE DECISION*****
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Court Service List

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